

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION**

**LEOCADIO HERNANDEZ AND  
LETICIA DARIELA GARCIA,  
INDIVIDUALLY, AND AS  
NEXT FRIENDS FOR L.S.H.,  
A MINOR**

**Plaintiffs,**

**VS.**

**UNITED STATES OF AMERICA AND  
FORT DUNCAN MEDICAL CENTER  
L.P. D/B/A FORT DUNCAN  
REGIONAL MEDICAL CENTER,**

## Defendants.

**S**

**CIVIL ACTION NO. 2:16-cv-00066-AM-CW**

**PLAINTIFFS' MOTION TO EXCLUDE ALL INFORMATION REQUIRED OF  
DEFENDANTS PURSUANT TO LOCAL RULE CV-16**

TO THE HONORABLE JUDGE ALIA MOSES:

COME NOW Plaintiffs and file this Motion to Exclude All Information Required of Defendants Pursuant to Local Rule CV-16. Plaintiffs respectfully request that the issues presented in this Motion be heard during the parties' upcoming docket call on September 11, 2018.

## I. BACKGROUND

The current scheduling order in this case instructs the parties to consult Local Rule CV-16 regarding matters to be filed in advance of trial. *See* EXHIBIT A, *Second Amended Docket Control Order* (Doc 34). CV-16 (e) states in relevant part:

(e) Unless otherwise ordered by the court, each party shall serve and file the following information at least 14 days before the scheduled date for trial, jury selection, docket call, or the final pretrial conference, whichever is first:

- (1) A list of questions the party desires the court to ask prospective jurors.
- (2) In cases to be tried to a jury, a statement of the party's claims or defenses to be used by the court in conducting voir dire. The statement shall be no longer than ½ page with type double-spaced.
- (3) A list of stipulated facts.
- (4) An appropriate identification of each exhibit as specified in this rule (except those to be used for impeachment only), separately identifying those that the party expects to offer and those that the party may offer if the need arises.
- (5) The name and, if not previously provided, the address and telephone number of each witness (except those to be used for impeachment only), separately identifying those whom the party expects to present and those whom the party may call if the need arises.
- (6) The name of those witnesses whose testimony is expected to be presented by means of a deposition and designation by reference to page and line of the testimony to be offered (except those to be used for impeachment only) and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.
- (7) Proposed jury instructions and verdict forms.
- (8) In nonjury trials, Proposed Findings of Fact and Conclusions of Law.
- (9) Any motions in limine.
- (10) An estimate of the probable length of trial.

See Texas Western District Local Rules at p. 21-23. Pursuant to an Order from this Court, docket call in this case is set for September 11, 2018. See EXHIBIT B, *Order Setting Docket Call* (Doc 38). Accordingly, Plaintiffs timely filed all pre-trial documents listed in CV-16 on August 28, 2018 – 14 days before the date scheduled for docket call. To date, **neither Defendant has filed any of the pretrial documents required by CV-16.**

## II. ARGUMENT

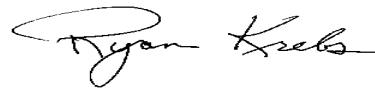
Because Defendants have failed to file the necessary pre-trial documents as required by this Court and local rule CV-16, Plaintiffs respectfully request that this Court strike all use by

Defendants of any information or material required by CV-16. Specifically, Plaintiffs request this Court strike not only the documents required by CV-16, but the use of the all evidence, information, materials, etc. derived from these required documents. For example, Plaintiffs seek to exclude not only Defendant's Witness Lists, but also the witnesses themselves.

### **III. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the Court to GRANT this Motion to Exclude All Information Required of Defendants Pursuant to Local Rule CV-16, and for all such other and further relief to which Plaintiffs are justly entitled.

Respectfully submitted,

By:   
**RYAN KREBS, M.D., J.D.**  
Texas State Bar No. 00792088

**LAW OFFICE OF RYAN KREBS, M.D., J.D.**  
805 W. 10<sup>th</sup> Street, Suite 300  
Austin, Texas 78701  
(512) 478-2072  
(512) 494-0420 Facsimile  
ryan@ryankrebsmdjd.com

**BYRON MILLER**  
Texas State Bar No. 24074716  
**MALONEY LAW GROUP, P.L.L.C.**  
918 S. Alamo Street  
San Antonio, Texas 78205  
(210) 228-0400  
(210) 758-5908 Facsimile  
Byron@maloneylawgroup.com

**RICHARD F. GUTIERREZ**  
Texas State Bar No. 08644200  
113 E. Losoya Street  
Del Rio, Texas 78840  
(830) 774-5591  
(830) 774-5593 Facsimile  
rfgrfg@yahoo.com

**ATTORNEYS FOR PLAINTIFFS**

**CLAYTON R. DIEDRICHS**

Colorado State Bar No. 16833  
Assistant United States Attorney  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
(210) 384-7310  
(210) 384-7312 Facsimile  
clayton.diedrichs@usdoj.gov

**ATTORNEY FOR DEFENDANT  
UNITED STATES OF AMERICA**

AND

**STEVEN GONZALEZ**

Texas State Bar No. 08131900

**EDWARD J. CASTILLO**

Texas State Bar No. 24040658  
1317 E. Quebec Ave.  
McAllen, Texas 78503  
(956) 618-0115  
(956) 618-0445 Facsimile  
sgonzalez@valleyfirm.com  
ecastillo@valleyfirm.com

**ATTORNEYS FOR DEFENDANT  
FORT DUNCAN MEDICAL CENTER, L.P.  
D/B/A FOR DUNCAN REGIONAL MEDICAL  
CENTER**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded, pursuant to the Federal Rules of Civil Procedure, on this 4<sup>th</sup> day of September, 2018, to the following counsel of record:

Clayton R. Diedrichs  
Assistant United States Attorney

***Via CMRRR***


601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
(210) 384-7310  
(210) 384-7312 Facsimile  
[clayton.diedrichs@usdoj.gov](mailto:clayton.diedrichs@usdoj.gov)

**ATTORNEY FOR DEFENDANT  
UNITED STATES OF AMERICA**

Steven Gonzalez  
Edward J. Castillo  
1317 E. Quebec Ave.  
McAllen, Texas 78503  
(956) 618-0115  
(956) 618-0445 Facsimile  
[sgonzalez@valleyfirm.com](mailto:sgonzalez@valleyfirm.com)  
[ecastillo@valleyfirm.com](mailto:ecastillo@valleyfirm.com)

*Via E-service*

**ATTORNEYS FOR DEFENDANT  
FORT DUNCAN MEDICAL CENTER, L.P. D/B/A FOR DUNCAN REGIONAL  
MEDICAL CENTER**



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Ryan Krebs

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION**

**LEOCADIO HERNANDEZ AND  
LETICIA DARIELA GARCIA,  
INDIVIDUALLY, AND AS NEXT  
FRIENDS FOR L.S.H, A MINOR,  
Plaintiffs,**

**v.**

**UNITED STATES OF AMERICA AND  
FORT DUNCAN MEDICAL CENTER  
L.P. D/B/A FORT DUNCAN  
REGIONAL MEDICAL CENTER,  
Defendants.**

[illegible]

**Civil Action No.**  
**2:16-CV-66-AM-CW**

## SECOND AMENDED SCHEDULING ORDER

Pending before the Court is the parties' Joint Motion to Amend Scheduling Order and for Entry of Second Amended Scheduling Order. ECF No. 32.<sup>1</sup> After reviewing the motion, it is hereby **ORDERED** that the motion is **GRANTED**. However, no other continuances shall be permitted, absent extraordinary circumstances.

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, the Court issues the following Amended Scheduling Order:

1. A report on alternative dispute resolution in compliance with Rule CV-88 shall be filed by **August 21, 2017**. The parties agree to mediate after substantial completion of discovery but no later than **August 14, 2017**.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by **July 14, 2017**, and each opposing party shall respond, in writing, by **August 9,**

<sup>1</sup>The parties are warned to carefully docket any electronically submitted filings. The present motion was not docketed as a motion, while supplemental disclosures were.

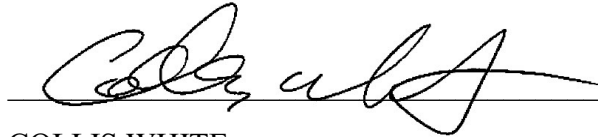
**2017.**

3. The parties shall file all motions to join additional parties by **June 1, 2017**. Plaintiffs shall file all motions to amend or supplement pleadings by **February 15, 2018**. Defendants shall file all motions to amend or supplement pleadings by **February 22, 2018**.
4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) by **February 17, 2017**. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) by **March 20, 2017**. All designations of rebuttal experts shall be filed within **fourteen (14) days** of receipt of the report of the opposing experts.
5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, no later than **fourteen (14) days** of receipt of the written report of the expert's proposed testimony, or no later than **fourteen (14) days** of the expert's deposition, if a deposition is taken, whichever is later.
6. The parties shall complete all discovery by **March 1, 2018**. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.
7. All dispositive motions as defined in Local Rule CV-7(c) shall be filed no later than **March 23, 2018**.



8. This case will be set for a pretrial conference before the Honorable Collis White, United States Magistrate Judge, at a date and time to be determined later. The parties should consult Local Rule CV-16 regarding matters to be filed in advance of trial.

**SIGNED AND ENTERED** on January 23, 2018.


A handwritten signature in black ink, appearing to read 'Collis White', is written over a horizontal line.

COLLIS WHITE  
UNITED STATES MAGISTRATE JUDGE

# EXHIBIT B

UNITED STATES DISTRICT COURT **FILED**  
WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION

MAY 15 2018

CLERK, U.S. DISTRICT CLERK  
WESTERN DISTRICT OF TEXAS  
BY  DEPUTY

LEOCADIO HERNANDEZ, LETICIA  
DARIELA GARCIA

§  
§  
§  
§  
§

CIVIL NO:  
DR:16-CV-00066-AM

vs.

UNITED STATES OF AMERICA, FORT  
DUNCAN MEDICAL CENTER

ORDER SETTING DOCKET CALL

IT IS HEREBY ORDERED that the above entitled and numbered case is set for **DOCKET CALL** in Courtroom 1, on the 2nd floor, U.S. Courthouse, 111 E. Broadway, Del Rio, TX, on **Tuesday, September 11, 2018 at 10:15 AM**. All parties and counsel must appear at this hearing.

IT IS SO ORDERED this 15th day of May, 2018.



ALIA MOSES  
UNITED STATES DISTRICT JUDGE